**IN THE UNITED STATES DISTRICT COURT**
**FOR THE MIDDLE DISTRICT OF ALABAMA**

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| **JOHNNY C. FENN, JR., #238558** | ) | |
| | ) | |
| **Plaintiff,** | ) | |
| | ) | **Civil Action No.: CV-05-515-F** |
| **v.** | ) | |
| | ) | |
| **MIKE HUGHES, et al.,** | ) | |
| | ) | |
| **Defendants.** | ) | |

## AFFIDAVIT OF JAMES MUELLER

Before me, the undersigned authority, on this day personally appeared James Mueller who being by me first duly sworn, deposed and stated upon his oath the following:

My name is James Mueller. I am over the age of twenty-one (21) years and I am a Defendant in the above-referenced case. I have personal knowledge of the following:

At all material times hereto, I was employed by the Troy Police Department as a Police Officer. I have been a law enforcement officer for approximately six and a half years.

On October 3, 2004, I, along with Officer Mike Hughes, was dispatched to Pinckard's Convenience Store on Highway 231 south of Troy for a trespassing call involving the plaintiff, Johnnie Fenn. While we were in route, dispatch informed us that Fenn had an active felony warrant and that he was leaving Pinckard's in a silver minivan headed towards the Pocossin area. Officer Mike Hughes advised that he saw the van on Smith Road. After Officer Hughes caught up with the van, he advised that the driver of the van told him that he had dropped Johnnie Fenn off at an unknown residence on Smith Road. As I was headed towards Smith Road, Troy Police Sergeant Railey, the first shift supervisor, advised that he saw Fenn in a red/silver Ford SUV. Fenn jumped out of the vehicle and ran on foot into a wooded area. Other officers and I began setting up a perimeter, and Sergeant Railey advised that Fenn was possibly in one of three double-wide trailers in the back of the trailer park. Several Pike County deputies arrived on the scene. One of the sheriff's deputies saw Fenn sitting on a porch. Fenn then ran into a heavily wooded area at the rear of the trailer park. Sergeant Railey advised us to spread out and told dispatch to request tracking dogs.

As I was setting up a perimeter, Officer Crawley called out that he was in foot pursuit of Fenn. I got into my vehicle and drove to Officer Crawley's location. As I arrived, Fenn was getting into a red Ford Econoline van. Officer Crawley advised that Fenn had stolen the van. At that point, I knew that Fenn was wanted on a felony warrant and that he had stolen a van. Fenn was driving directly at me, and veered to my right, going off the road. I called out "vehicle pursuit" over the radio. Officer Mike Hughes and a Pike County deputy joined in the chase. Officer Hughes was in front of the van, I was behind, and the deputy was to the left attempting to box the van in. Fenn then intentionally rammed Officer Mike Hughes' vehicle in the rear and then ran off the right shoulder, hitting a mailbox.

Officer Hughes regained control and positioned himself on the left of Fenn's vehicle, with me directly behind him. Fenn then swerved hard to the left intentionally ramming Officer Hughes' car in an attempt to either injure him or force him into the ditch. Fenn then came back across the road and attempted to do the same to me, colliding with my car. At that time, Officer Hughes' vehicle was disabled, and I was directly behind Fenn as we turned South on U.S. Highway 231 headed towards Brundidge, Alabama. I backed off and allowed Sergeant Railey to take the lead, and he declared emergency traffic over the radio. The Brundidge Police Department and the Alabama State Troopers were notified.

Fenn continued south on Highway 231, and then turned left into a Chevron station. I attempted to cut Fenn off, placing my vehicle at the exit. Fenn turned straight at me and rammed my patrol car again. I managed to turn my car enough so the impact was into the rear door instead of my driver's door. I then continued the pursuit, as Fenn made several evasive turns into a residential area, cutting through one yard and coming out onto another street. I was coming around the curve in pursuit of Fenn when units were notified that Fenn had collided head on with a Brundidge Police Department unit. As I made the turn, I could see Fenn jumping out of his vehicle and running, jumping over a chain-link fence into a yard. I stopped my vehicle and ran around the front of the residence as Fenn was emerging from the backyard of another house. I chased Fenn for 100 yards or more and then tackled him in the middle of the road. Other officers arrived and handcuffed Fenn and placed him in a patrol unit. I learned that Officer Ben Crawley had used mace to subdue Fenn because Fenn was kicking and yelling inside the patrol car. He was then transported to the Pike County Jail.

At no time did I strike Fenn. At no time did I use any OC pepper spray on Fenn. I only used that amount of force which was necessary to subdue Fenn and gain control of the situation. Force was necessary to subdue Fenn because he posed a threat to himself and officers.

Attached is the Incident Report File which is maintained by the Troy Police Department in the ordinary course of business. Also attached are records accurately reflecting the Continuing Education courses I have completed and certificates I earned while at the Montgomery Police Academy Alabama Peace Officers Standards and Training (APOST) certification.

**JAMES MUELLER**

STATE OF ALABAMA
COUNTY OF MONTGOMERY

Before me, the undersigned Notary Public, did personally appear James Mueller who states to me that he is aware of the contents of the foregoing Affidavit, and that he did execute it voluntarily.

SWORN TO and SUBSCRIBED before me on this the 17th day of August, 2005.

NOTARY PUBLIC

**My Commission Expires 04-30 2006**